
Minutes

Board of Natural Resources Meeting

January 6, 2009
Natural Resources Building, Olympia, Washington

BOARD MEMBERS PRESENT

The Honorable Doug Sutherland, Commissioner of Public Lands
Bob Nichols, for the Honorable Christine Gregoire, Washington State Governor
The Honorable Terry Bergeson, Superintendent of Public Instruction
The Honorable Jon C. Kaino, Commissioner, Pacific County
Bruce Bare, Dean, University of Washington, College of Forest Resources
Daniel J. Bernardo, Dean, Washington State University, College of Agricultural, Human, and Natural Resource Sciences (via conference call)

CALL TO ORDER

Chair Sutherland called the meeting to order at 9:13 a.m. on January 6, 2009, in Room 172 of the Natural Resources Building.

APPROVAL OF MINUTES

MOTION: Terry Bergeson moved to approve the December 2, 2008, Board of Natural Resources Meeting Minutes.

SECOND: Bruce Bare seconded.

ACTION: Motion passed unanimously.

PUBLIC COMMENTS FOR AGENDA ACTION ITEMS

Todd Peterson, representing the 13,000 members of the Washington Off Highway Vehicle Alliance (WOHVA) and the 1,500 members of the Northwest Motorcycle Association approached the Board to comment on the WAC (Washington Administrative Code) 332 revision. Mr. Peterson said that WOHVA is thankful for the opportunity to work with the Department to address their concerns, but they are concerned with two provisions:

- Section 400 – closed trails and trail usage
- Section 405 - building of trails

Mr. Peterson said that WOHVA understands that the Department's intention is to protect the trusts and it agrees with that objective; however they feel that there are existing laws in place to punish people for causing damage that would be detrimental to the trusts. WOHVA doesn't feel the provisions in the WAC update adds any value to the trusts but they do detract from the

multi-use intent with the DNR mandate in RCW (Revised Code of Washington) 79 to allow recreational use where it doesn't impede trust value. He said the existing laws in place protect the place and the proposed laws don't add any more protection but do degrade from recreational use.

Mr. Peterson said that section 400 creates an environment where trails are closed to wheeled vehicle recreation, like bicycles or motorcycles unless they are posted as open. He pointed out that DNR uses trenches throughout the trail system for erosion control, and they are concerned about how an average user on the ground may be traveling and may encounter a water bar. They would not know if its purpose was for erosion control or was intended for closing the trail; to follow the law they would have to turn around. This leaves a resource that people enjoy using but may not because it is unclear. WOHVA suggests posting them as closed if they need to be closed. Their volunteers are welcome to help out and support closing trails that cause environmental damage.

Mr. Peterson addressed section 405 which has to do with the building of trails. He said that the way this section is worded if a person walks through the woods several times and a trail forms they can be arrested. His association feels it's a bit draconian; they don't support building roads through the woods, but to punish people for creating a trail where no harm is caused to the trust doesn't seem like it adds any value to the public, especially when it could involve sending a person to jail. He argued that the land being referred to gets clear cut occasionally, and it's OK to go in with chainsaws and bulldozers but it's not OK for a trail to wind through the woods that doesn't do any harm.

Mr. Bare asked if WOHVA is not opposed to closing trails, but to the means.

Mr. Peterson said that they are not opposed to creating trails for good reasons; they want to protect the trusts and the environment. He asked if the Department has the resources to put up a sign for all the resources that are open. He asked what resources would have to be taken away from to have a crew maintaining signs as they disappear, fall down, etc. He said that doesn't seem to be a good use of the Department's scarce resources. He suggested that the Recreation WAC update be sent back to the DNR to polish up Sections 400 & 405. He reminded the Board that there are thousands of off-road vehicle users who volunteer and help out are happy to support it with the suggested modifications. WOHVA wants to work with the Department to develop a set of rules that will be good for the next 20 to 30 years.

Jon Kaino asked if the signs that read "No entry" last as long as signs permitting entry.

Mr. Peterson said he hasn't seen significant degradation of the signs in Northwest region area; especially where they are posted in an educational manner in an effort to protect a resource. He said they place their logos on the signs and thinks that when recreationists see that it is a collaborative effort amongst the citizens of the state and the Department to protect the resources it's a situation where everyone benefits from it. In the past people have torn down the closed signs and away they'd go, but they are seeing less and less of that as they are educating the users not to do that sort of thing.

Mr. Kaino said that Mr. Peterson made a valid argument about whether the trails should be posted open or closed, and that issue could be argued on both sides with great validity. He did not agree with the argument that walking through the woods and creating a trail could cause a citizen to be arrested. Mr. Kaino stated that it is not the intent of the proposed language. He said there is a significant difference in walking through the woods until you create a worn area that is a trail and driving a quad through reprod until there's a trail.

Mr. Peterson agreed that that destruction of resources is already a crime in the RCW's and that WOHVA does not support destruction of resources. He sees nothing wrong where trails exist and there has been no harm to the trust.

Mr. Kaino addressed Mr. Peterson's comment about not knowing if a berm was intended for erosion or to keep out motorized vehicles. He said that anyone that has spent any time in the woods should know the difference between a water bar road and a trench to keep people out. He suggested that the language and definitions in 400 read that there is no access through any berm or trench in excess of 2 feet. He asked Mr. Peterson if that would resolve his concerns.

Mr. Peterson said that it would go a long way towards resolving the concerns. He said that the definitions are important tools to firm the language up. He said that he likes the idea of having trails posted closed and in Northwest Region they are working well.

Terry Bergeson asked what the Board was going to do with this today

Chair Sutherland explained that staff will be making a presentation today; they have reviewed the e-mail messages from Mr. Peterson and should be able to answer most of his questions.

TIMBER SALES (Action Item)

Proposed Timber Sales for February 2009

Jon Tweedale, Assistant Division Manager, Product Sales & Leasing Division, greeted the Board and provided the timber sales results from December and then the proposed sales for the month of February.

Mr. Tweedale said that the four December sales that did not sell were a function of the volatility and uncertainty in the marketplace at this time. The sales will be brought back at the appropriate time; staff will look at the appraisals and make sure the assumptions are correct before bringing them back.

Chair Sutherland said that it appears that the pole market is very strong.

Mr. Tweedale replied that the pole market is exceptionally strong; primarily the large transmission poles.

Chair Sutherland asked if the Department is doing anything specific to capture that market.

Mr. Tweedale replied that DNR has a two person "pole team." He reported that in the last fiscal year they have laid out, and set up 21,000 poles for sale, which is a good amount for two people. The return on investment is significant. Mr. Tweedale has asked them to set a goal of 25,000 poles a year.

Ms. Bergeson asked why the pole market is so good.

Mr. Tweedale said that it is mostly due to replacements and infrastructure. The transmission size poles are the large ones that carry the feeder lines. The distribution poles carry from the feeder lines out to developments and smaller communities.

Ms. Bergeson asked if it is tied to the influx of people into developments that the Board has been discussing regarding encroachment on public lands.

Mr. Tweedale said that a lot of the electricity to the development is underground; the primary demand is in transmission. He used the development down I-5 as an example; the new light poles are characterized as transmission poles and likely came from Capitol Forest. He said it is good to see them using wood as opposed to concrete or steel for those light poles. Mr. Tweedale said that the demand is strong and will continue. For instance DNR produces a tighter stand but a longer age class for harvest; therefore it produces much of the larger poles that come out of stands. The industrial producers have a shorter rotation length so they don't grow the taller transmission poles but rather the 60-70 foot distribution type.

Ms. Bergeson asked if the silviculture strategy is paying off.

Mr. Tweedale replied that it is one of the benefits.

Mr. Bare asked what the Department's goal for total sales is this year.

Mr. Tweedale replied that the Department's goal, with the carry-over from sales that didn't sell last year is 718, and it is just over half way there with the package he is presenting today. This year they have been able to schedule the sales so that there are not as many sales in the bow wave, which is typically May and June. There are quite a few sales in February, March, and April which gives some breathing room for May and June. If there are sales that don't sell, they can be sold in those key months. He said that he is confident; the volume is there, it is just a matter of markets and logistics, and bringing them forward at the right price.

December 2008 Sales Results:

16 sales offered & 12 sold; 67.86 mmbf offered & 56.0 mmbf sold; \$12.5 million minimum bid & \$12.0 million sold; \$184/mbf offered & \$215/mbf sold; average number of bidders = 2.3

Proposed February 2009 Board Sales:

11 sales offered at 58.8 mmbf; \$9.9 million minimum bid; average \$168/mbf.

There were no SEPA comments.

MOTION: Terry Bergeson moved to approve the February 2009 timber sales.

SECOND: Jon Kaino seconded.

ACTION: Motion passed unanimously.

LAND TRANSACTIONS

2007 – 09 Trust Land Transfer Summary

Evert Challstedt, Property and Acquisition Specialist approached the Board to provide a summary of the 2007-09 Trust Land Transfers (TLT). He referred to a spreadsheet that summarized the TLT projects for a total of \$41 million so far this biennium. He referred to the timber column which shows that \$35 million has been transferred to the Common School Construction Account and \$6 million has been transferred to the land replacement account. He noted this is \$41 million of the \$98 million appropriation; the Department is less than half way through the appropriation.

Mr. Challstedt said that the appraisal and review appraisal process takes 6 to 8 months and there is a lot of work involved in getting properties ready for appraisal and to the Board. All the appraisals, except for two, are underway and nearing completion. Many additional projects will come before the Board in the next few months. The spreadsheet indicates the anticipated board and lease completion date. Two leases will require board action to approve an intergrant exchange. The remaining leases do not require board action.

Mr. Nichols asked if the fee transfers #1-17 are in rank order.

Mr. Challstedt said that they are in the order as submitted to the legislature. The legislature added a project to the packet so they are in legislative order as provided to the Department in the budget bill.

Mr. Nichols asked if the legislature reaffirmed the Department's ranking with the exception of adding one project. He asked which project was added.

Mr. Challstedt replied that the legislature actually added three; Tarboo Bay, Hoh Valley, and Tukes Mountain.

Mr. Nichols asked if they were inserted in that rank order.

Mr. Challstedt said that they were inserted in that rank order. He explained that the order itself is not so much a priority order as it is a timber to land ratio order, which is the way the Department submitted it to the legislature. The last column in the spreadsheet reflects that ratio of the completed projects. He explained that the legislature drew a line through the middle of all the transactions and labeled the lower half to be 50-year leases. The Department recommended three properties as leases, the legislature added the rest.

Ms. Bergeson asked why the legislature draws the line at lease value.

Mr. Challstedt said that he assumed because the lease value serves as timber value in the equation, and all of the lease value goes to the school construction account. No component of value goes into the replacement account, so the total appropriation needed to transfer the properties is reduced.

Mr. Kaino asked if the lease payment replaces the timber value.

Mr. Challstedt answered that the legislation directs that to be the case.

Mr. Kaino asked if after 50 years the land reverts back to the original ownership.

Mr. Challstedt said that the land never leaves the Department's ownership. At the end of the 50 years the lease terminates and the property is then free and clear and can be managed without restrictions.

Mr. Kaino asked why the Department submitted three lease proposals and came back with 19.

Ms. Bergeson asked why that was

Mr. Challstedt said he can't answer for the legislature.

Chair Sutherland replied that this was an opportunity for those who have interest in a specific parcel of land to ask the legislature for this. Because of the problems with the 80/20 relationships it's easier for the legislature to direct the Department to lease the properties reducing that complication. They provide the funds to do it but it then gives people who have a particular interest in parcels of land an opportunity to secure them for whatever purpose they might have; generally recreation or open space.

Ms. Bergeson asked if the 3,200 acres in the Sultan Basin is going to be leased by Snohomish County.

Chair Sutherland replied that that's where it's located, but will be leased to the Natural Resource Conservation Areas program and will still be managed by the Department, but in a manner that is consistent with the NRCA provisions.

Ms. Bergeson asked if this one was Common School Trust land.

Chair Sutherland replied that it is.

Ms. Bergeson asked if the lease is supposed to give the trust the equivalent of the timber production value over the 50 years.

Chair Sutherland said the current timber value. He said that the appraisal is based on today's timber values because there is no way to predict what they may be in the future. He asked Bonnie Bunning to approach the Board to provide a better explanation.

Bonnie Bunning, Executive Director of Policy and Administration, greeted the Board and began an explanation of the lease process. She explained that the leases are based on the land and timber value; the whole value of the property just as we might lease a piece of land for another purpose, or if it's leased for agriculture it's based on the value. The payment is made up front for the entire length of the lease, which is approximately 85% of the total value of the property today.

Ms. Bergeson asked if the general fund deposits that into the construction account.

Ms. Bunning said that it is deposited in the construction account. She explained that one of the objectives of Representative Fromhold was to increase the amount of general fund money that could go into the common school fund account, and in the process, take care of those properties that don't match the TLT program with the 80/20 ratio, have high land values, or low timber and be able to set those aside for the 50 or 30 year period of the lease.

Mr. Kaino asked if the upfront payment based on the 85 percent value of the property is based on real property and timber values combined.

Ms. Bunning replied that it is based on real property and timber values combined.

Mr. Kaino calculated that if there was a total property value of \$1.1 million if there would be a one-time payment of approximately \$850,000 paid to the school construction account paid for that total value.

Mr. Challstedt said that it's not calculated on a percent basis but when it is appraised it works out to be about 85% of the value.

Mr. Kaino asked if the criteria for moving the lease properties into the TLT are the same for those that the Department sells.

Ms. Bunning said that they normally are but in this particular biennium the Hoh Valley property was put on the TLT list; it is an upland parcel that the Hoh Tribe needed to move their village out of the flood plain. This one-time housing and essential services was added as a new purpose. The rest are the same purposes that the Department would normally do as a fee transfer.

Mr. Kaino asked if these are non-productive properties that would be better moved into an NRCA or to a county and replaced with more productive property. He said that in the lease case the Department is not replacing the land but is selling the timber and buying 50 years of land value with the assumption that the parcel can be re-evaluated in 50 years and determine whether it may have a value.

Ms. Bergeson said she does not like this.

Ms. Bunning explained that the lease mechanism does produce some uncertainty on everyone's part; sometimes park districts don't want to take a term lease because they have to make park development investments and it leaves a question about what happens in 50 years after a place has been a park, and how realistic is it that the parcel will revert to timber harvest. On the other hand it does provide the value over that time period and has a decision point out there at the end of the lease. Even if the parcel lease were to be renewed or continued, or even sold again, the appreciation of the land has been accruing so it works out financially for the Common School Trust.

Ms. Bergeson asked if it is a one-time payment that is accruing for the trust. She said it seems like we are failing our fiduciary duty to the trust.

Mr. Kaino explained that it would be just as if the Department cut the trees and sold them. It gets a one-time payment every time it logs.

Ms. Bergeson asked where the money is reflected on the chart and how the 3200 acres will benefit the trusts.

Mr. Challstedt explained that the Department has a \$98 million appropriation to complete the transfers and will be able to do that. He said that he left out the estimated values that were submitted upfront to the legislature. He said they are not accurate and he wanted to provide the Board with the actual approved appraised values. He said as the leases are signed he will populate the values into the chart.

Mr. Kaino asked if these have to be Common School lands, just as if the Board were approving a regular TLT.

Ms. Bunning indicated that they do have to be Common School lands.

Mr. Kaino asked if the Department could take a piece of county transfer land and release it.

Mr. Sutherland said that an intergrant exchange would have to be done first. He said that by law it has to be in the Common School Trust,

Ms. Bunning said that it is because the proceeds go there. It is using the money twice because a park is established and money goes into the Common School Construction account.

Mr. Kaino asked if there was a piece of county trust land that was encumbered in some way and DNR wanted to move that land into some kind of preservation status, under the lease program if it can only be moved in for 50 years, not for perpetuity.

Ms. Bunning stated that was correct.

Mr. Kaino said that the Department doesn't know if in 50 years if that encumbrance will remain on that county land. He asked if it is absolutely impossible to run the lease program on county lands so that lease revenue comes directly to the county that holds it.

Chair Sutherland replied that under the current law it can't be done. If the legislature felt it was in the best interest of the counties to extend this program to the counties that could happen.

Mr. Kaino said that he knows that under the TLT program the intergrant exchange has to be done but his thought is that since the property is not being sold or traded and the Department is maintaining ownership it may be different.

Ms. Bergeson asked if one of the reasons the properties are listed in the top or bottom of the spreadsheet is because the Department still has the opportunity for those properties that don't meet the ratio to still be part of the program.

Mr. Challstedt explained that is one of the reasons to make a property a lease and not a fee transfer.

Ms. Bergeson questioned if the ratio is 80/20 why there is 24 percent and a 55.2 percent and a 0 and 13 percent listed.

Mr. Challstedt explained that the numbers reflect the actual ratio of timber to land in those properties; they aren't accumulative ratios The accumulative ratios are not reflected on the chart.

Monroe Landing Trust Land Transfer (TLT)

Evert Challstedt, Property and Acquisition Specialist approached the Board to provide the Monroe Landing TLT. He explained that the property is located 2 miles south of Oak Harbor on Whidbey Island. It is adjacent to Scenic Heights which was presented and approved by the Board in July. Monroe Landing was not presented to the Board at that time because the appraiser determined the Department did not have access which reduced the appraised value.

Mr. Challstedt explained that the appraiser was asked to value the property with and without access. The two values differed by \$195,000. The Department attempted to acquire access so the transfer value would be higher, however adjacent landowners declined to grant the Department access. The access needed for appraisal purposes was for higher and better use which is residential development. The county is willing to accept the property without access as they have the ability to acquire access. Once transferred the parcel will have a deed restriction prohibiting development; landowners will recognize that it is owned by the county as a recreational tract and not developed.

Mr. Challstedt reviewed the timber and land values of the property. He explained that the Department looked at the land value with access and determined that it was reasonable to take the land value with access and subtract the actual cost of acquiring an easement and constructing a road resulting in a land value of \$428,000.

Proposal

The Department of Natural Resources proposes to transfer 45 acres, more or less, of Common School Trust property located in Island County to Island County. Proceeds from the timber value will be deposited into the Common School Construction Account. The land value proceeds will be deposited to the Real Property Replacement Account and used to purchase replacement property desirable for the Common School Trust. The property asset base of the Common School Trust is improved by:

- Disposing of property that is inefficient to manage for timber harvest income.
- Disposing of an isolated ownership geographically separated from other trust holdings.
- Enabling replacement of the asset with property that has greater potential for income production to provide future revenue to support public schools statewide.
- Public trust benefits include transferring property with ecological value to an agency to be held and managed for public benefit.

The property is located approximately 2 miles South of Oak Harbor within Section 16, Township 32 North, Range 1 East, W.M., in Northwest Region. There are no encumbrances, improvements or present income associated with this property. The current market values are:

Timber (811 Mbf)	\$197,000
Land & Reproduction	<u>\$428,000</u>
TOTAL	\$625,000

The terms of the transfer are cash. The property is included in the 2007-09 Biennium Trust Land Transfer Program. Approval and funding for the transfer is authorized by Washington Laws of 2008, Ch. 328, Section 3042 and RCW 79.17.200. Transfer will be by quitclaim deed. Mineral rights will be retained by the Common School Trust. As specified by legislation, permitted use will be restricted to state park, fish and wildlife, open space, or recreation purposes.

MOTION: Terry Bergeson moved to approve Resolution 1284

SECOND: Bob Nichols seconded.

ACTION: Resolution 1284 was adopted.

Quilcene Acquisition

Anne Sharar, Asset Management and Protection Division provided the presentation for the Quilcene Acquisition. Ms. Sharar explained that this is a forest land at risk of conversion property and meets the criteria set by the legislature for the Department to acquire those lands that could convert to incompatible uses through the replacement account. The property is located in Jefferson County approximately 2 miles northwest of Quilcene and about a mile from the Olympic National Forest boundary. The property is a private in-holding in state forest land. The property is zoned by Jefferson County as rural forest. It is site 2 forest land and was harvested a few years ago. It has three to four year old Douglas fir growing on the site, but

there is no harvestable timber at this time. The land has low erosion potential. The market value is \$170,000 which was set by appraisal.

Ms. Sharar explained that the Department is interested in acquiring this property because the Common School Trust will receive good forest land, there will be future improvement to the trust revenues, and it eliminates a private in-holding that has potential for development and incompatible uses.

Ms. Bergeson asked what incompatible uses meant.

Ms. Sharar explained that the Department is managing the rest of the forest block for forestry purposes. The land is eligible to have one residence; the Department wouldn't want to have residential development in the midst of a forest block that it is actively managing.

Mr. Kaino stated that he had spoken with the Jefferson County Commissioners and they support the acquisition.

Proposal

The Department of Natural Resources proposes to purchase 40 acres, more or less, of real property owned by J.A.L. Associates, located in Jefferson County. The purpose of this purchase is to acquire working forest lands at-risk of conversion to non-forest use. The Common School Trust will acquire property that has income production potential.

The property is approximately 2 miles NW from Quilcene and is within Section 15, Township 27 North, Range 2 West, W.M., in Olympic Region. Purchase price is \$170,000 which includes reprod. This property is being purchased per legislative direction under 2007 Regular Session, 60th Legislature, Engrossed Substitute House Bill 1092, Chapter 520, Laws of 2007, Section 3214. Acquisition of this property meets the "at risk of conversion" conditions outlined in House bill 1092. Conveyance of title will be by Statutory Warranty Deed, and title insurance will be provided by the seller. The State will acquire minerals.

MOTION: Terry Bergeson moved to approve the Quilcene Acquisition Resolution 1285.

SECOND: Bob Nichols seconded.

ACTION: Resolution 1285 was adopted.

Grant County Trust Land Sales

Chair Sutherland explained that the following sales are a batch of sales located in Grant County.

Ms. Bergeson asked if each were a separate transaction even though they are a batch of sales.

Debi Van Buren, Transactions Manager, approached the Board to present the transactions and explained that each parcel will be auctioned individually on the same day.

Mr. Nichols asked if they are individual resolutions.

Ms. Van Buren stated that they are and that she will identify them on the last slide to keep them in order. She explained that she would present each sale individually and present the resolutions for adoption at the end of the presentation. She explained that there are five parcels that are all School Trust Land and are zoned agriculture. The total acres for all five parcels are 250 acres but they range from 20 to 111 acres. The total value is \$442,000; individual values range from \$38,000 to \$195,000. There are no water rights with any of the parcels which does affect the values of agricultural land.

Wheeler East

Ms. Van Buren began with the presentation on the Wheeler East property. She explained that this parcel has two older potato sheds valued at \$160,000; the state has a one-half interest in the potato sheds leaving an \$80,000 building value and a land value of \$115,000. The parcel will be auctioned for \$195,000.

Ms. Van Buren said that the parcel has a \$600 per year lease with the potato shed lessee and a \$3,200 per year oil and gas lease. The oil and gas lease will stay with the Common School Trust because the Department is not conveying any of the minerals.

Ms. Bergeson asked Ms. Van Buren to explain the purpose of this batch of sales.

Ms. Van Buren explained that some of the parcels were dropped out of an exchange but promises were made that the parcels would be included in a later exchange or auction which didn't happen. The Department is following through with that promise to specific lessees and landowners.

Mr. Kaino asked if the Department is selling these five parcels so it can replace them with more productive land.

Ms. Van Buren replied that was correct.

Chair Sutherland said that they are all very small.

Ms. Van Buren agreed saying they were small and isolated; the region generated the list.

Mr. Nichols asked for confirmation that these sales are being made because it makes fiduciary sense for the trusts and not because promises were made to the lessees.

Ms. Van Buren replied that these sales all make good fiduciary sense because most of them generate less than a one percent interest on the value of the land; from the region standpoint they are a management problem because they generate so little income that the cost of processing the lease is not fiscally prudent.

Proposal

The Department of Natural Resources proposes to designate 23.44 acres, more or less, of Common School Trust property located in Grant County, as Land Bank property for the purpose

of sale. The proceeds from the sale will be used to purchase replacement property desirable for the Common School Trust. The property asset base of the Common School Trust is improved by:

- Disposing of property that is inefficient to manage for natural resource or income production, and
- Enabling replacement of the asset with property that has greater potential for natural resource.

The property is approximately ½ mile north of Wheeler and is within Section 16, Township 19 North, Range 29 East, W.M., in Southeast Region. There are 2 (two) buildings originally constructed as potato sheds located on the parcel. Both are thought to be near the end of their economic life. Appraised at \$160,000 for both structures, the state owns a ½ interest in the buildings; the lessee owns the remaining ½ interest. The present income associated with the property is \$3,842.06 per year.

The market value of the property is \$195,000, which includes \$115,000 for land value and \$80,000 for the state's half-interest in the structures. The property will be sold at a public auction - oral bid. The terms of the sale are cash and the sale is authorized by Chapter 79.19 RCW. Conveyance of title will be by quitclaim deed. Mineral rights will be reserved in the Common School Trust. The Lessee's half-interest in the appraised value of the structures (\$80,000) will be purchased separately by the successful bidder.

Road 6&G

Ms. Van Buren continued with the presentation on the Road 6&G. She explained that the minimum bid is \$43,000. The 20-acre parcel is south of Ephrata; it does not have a lease

Chair Sutherland asked if the parcel just sits there.

Ms. Van Buren said that the parcel is being encroached on by the adjacent neighbor who stores his boxes on the property.

Proposal

The Department of Natural Resources proposes to designate 20.31 acres, more or less, of Common School Trust property located in Grant County, as Land Bank property for the purpose of sale. The proceeds from the sale will be used to purchase replacement property desirable for the Common School Trust. The property asset base of the Common School Trust is improved by:

- Disposing of property that is inefficient to manage for natural resource or income production, and
- Enabling replacement of the asset with property that has greater potential for natural resource.

The property is approximately 11 miles south from Ephrata and is within Section 36, Township 20 North, Range 25 East, W.M., in Southeast Region. There are no improvements or income associated with the property. The market value of the property is \$43,000. The property will be sold at public auction by oral bid. The terms of the sale are cash. The sale is authorized by Chapter 79.19 RCW. Conveyance of title will be by quitclaim deed. Mineral rights will be reserved in the Common School Trust.

Adams Road

Ms. Van Buren continued with the presentation on the Adams Road property. She said that the 20-acre parcel is southeast of Quincy. It will have a \$42,000 minimum bid. The \$2288.00 per year income comes from the adjacent landowner who is using some water that he has in his circle to irrigate.

Mr. Nichols asked if the neighbor was leasing the parcel from the Department.

Ms. Van Buren replied that the neighbor is leasing the parcel from the Department for \$2288.00 per year.

Proposal

The Department of Natural Resources proposes to designate 20.19 acres, more or less, of Common School Trust property located in Grant County as Land Bank property for the purpose of sale. The proceeds from the sale will be used to purchase replacement property desirable for the School Trust. The property asset base of the Common School Trust is improved by:

- Disposing of property that is inefficient to manage for natural resource or income production, and
- Enabling replacement of the asset with property that has greater potential for natural resource.

The property is approximately 5 (five) miles southeast from Quincy and is within Section 36, Township 20 North, Range 24 East, W.M., in Southeast Region. There are no improvements associated with the property. The present income of the property is \$2,288.85 per year. The market value of the property is \$42,000. The property will be sold at public auction by oral bid. The terms of the sale are cash. The sale is authorized by Chapter 79.19 RCW. Conveyance of title will be by quitclaim deed. Mineral rights will be reserved in the Common School Trust.

Potholes A

Ms. Van Buren continued with the presentation on the Potholes A property. She explained that Potholes A and B parcels are located in south Grant County, south of Potholes Reservoir. They will be auctioned separately because they would exceed the 160 acre limitation on auctions. Potholes A consists of 75 acres; the income comes from a \$100 a year grazing lease. The Department will retain the \$800 per year oil and gas lease.

Ms. Bergeson asked if the Department can keep the leases even if it auctions the parcel off to the County.

Ms. Van Buren confirmed that the Department does keep the leases. She said that this is the only parcel of the five that does not have any access.

Proposal

The Department of Natural Resources proposes to designate 75.69 acres, more or less, of Indemnity Trust property located in Grant County, as Land Bank property for the purpose of sale. The proceeds from the sale will be used to purchase replacement property desirable for the Indemnity Trust. The property asset base of the Indemnity Trust is improved by:

- Disposing of property that is inefficient to manage for natural resource or income production, and
- Enabling replacement of the asset with property that has greater potential for natural resource.

The property is approximately 4 (four) miles southwest of Potholes Reservoir and is within Section 30, Township 17 North, Range 28 East, W.M., in Southeast Region. There are no improvements associated with the property. The present income associated with the property is \$1,001.06 per year. The market value of this property is \$38,000. The property will be sold at public auction by oral bid. The terms of the sale are cash. The sale is authorized by Chapter 79.19 RCW. Conveyance of title will be by quitclaim deed. Mineral rights will be reserved in the Indemnity Trust.

Potholes B

Ms. Van Buren finished with the presentation on the Potholes B property. This parcel is almost 111 acres. There is a \$100 per year grazing lease and the oil and gas lease will stay with the trust. The minimum bid is \$124,000. She noted that the minimum bid on all the parcels is the appraised value; the terms are cash on closing and the Department is not offering any contract terms on these parcels.

Mr. Nichols asked why Potholes B is worth more than Potholes A.

Ms. Van Buren said that Potholes B is worth more because of the access issue.

Proposal

The Department of Natural Resources proposes to designate 110.68 acres, more or less, of Indemnity Trust property located in Grant County, as Land Bank property for the purpose of sale. The proceeds from the sale will be used to purchase replacement property desirable for the Indemnity Trust. The property asset base of the Indemnity Trust is improved by:

- Disposing of property that is inefficient to manage for natural resource or income production, and
- Enabling replacement of the asset with property that has greater potential for natural resource.

The property is approximately 2 (two) miles south of Potholes Reservoir and is within Section 20, Township 17 North, Range 28 East, W.M., in Southeast Region. There are no improvements associated with the property. The present income is \$801.60 per year. The market value of the property is \$124,000. The property will be sold at public auction by oral bid. The sale is authorized by Chapter 79.19 RCW. Conveyance of title will be by quitclaim deed. Mineral rights will be reserved in the Indemnity Trust.

MOTION: Terry Bergeson moved to approve Wheeler East Resolution 1286.

SECOND: Bob Nichols seconded.

ACTION: Resolution 1286 was adopted

MOTION: Terry Bergeson moved to approve the Road 6&G Resolution 1287.

SECOND: Bob Nichols seconded.

ACTION: Resolution 1287 was adopted

MOTION: Terry Bergeson moved to approve the Adams Road Resolution 1288.

SECOND: Bob Nichols seconded.

ACTION: Resolution 1288 was adopted

MOTION: Terry Bergeson moved to approve the Potholes A Resolution 1289.

SECOND: Bob Nichols seconded.

ACTION: Resolution 1289 was adopted

MOTION: Terry Bergeson moved to approve the Potholes B Resolution 1290.

SECOND: Bob Nichols seconded.

ACTION: Resolution 1288 was adopted

Chair Sutherland called for a 5 minute break at 10:09 a.m.

The meeting reconvened at 10:14 a.m. Chair Sutherland explained to the Board members that an individual had arrived late and had asked to be included in the public comment on agenda action items. He asked the Board if they would be willing to accept late comments. The Board agreed and invited the individual to approach the Board and provide their comments.

Ben Wells, a member of WOHVA approached the Board to comment on the REC WAC rules. Mr. Wells apologized for being late for the comment period, stating that he was held up by weather and traffic conditions.

Mr. Wells began by saying that he lives about 10 miles outside Arlington. He said that he and his friends and family ride dirt bikes on logging roads. Last year his son rode up some logging roads, followed a small trail that was part of a grade, walked 200 feet up a small trail and went fishing with a friend; under the new regulations that will be a misdemeanor. He said he feels the law is very drastic and wrong. They are locking the public off public lands and he appealed to

the Board to take the rules under advisement because he feels that there is a significant need to look at the public views of public lands because there are problems. He said that locking the public out is not the way to address them; working with volunteer groups that are well meaning and have knowledge about what is going on out in the woods is the way to go. He said the present situation does not reflect that the Department is working with any of those groups. He thanked the Board for their time.

CHAIR REPORTS

Recreation Rules Update

Bonnie Bunning, Doug McClelland, and Pene Speaks approached the Board to provide an update on the Recreation Rules.

Ms. Bunning said that for the past few years the Department has been working on updating the rules for managing public access and recreation on its lands. She said that the current rules are over 30 years old. She explained that she would provide an overview of the significant changes and what is new with the rules, as well as the process. She noted that Pene and Doug would provide a review of the public comments and the process that was used.

Ms. Bunning explained that the Department is trying to provide the broadest public access and enjoyment of the lands, update the rules, and meet today's standards for public safety and natural resource protection. She said that the Department believes that it is taking a very common sense approach that is intended to give clear direction to people who use the lands; what is expected, what they can do and how to use the lands once they get there. Ms. Bunning provided an overview of the rule updates.

Ms. Bunning reviewed the project timeline. The project started in July 2004. She explained that the State Environmental Policy Act (SEPA) process, the outreach process and the rulemaking process were synchronized. Stakeholder and public meetings began in January 2005; an advisory committee was developed in January 2006 to review the first version of the rules. The Department went back out to stakeholders in January 2007, met with recreation groups in July 2007 and went to public hearings in June 2008 at which time the SEPA (State Environmental Policy Act) determination was issued. SEPA comments have been taken through that process right up to today. Ms. Bunning noted that the Department had previously provided the Board with a detailed presentation on the substance of the rules and they were updated.

Ms. Bunning explained that the new rules set apply beyond the trust lands to state lands and forest lands, including all roads, but also to state owned aquatic lands, Natural Area Preserves, Natural Resources Conservation Areas and other public lands leased from or under DNR management. The rules are built within the legal and policy framework of the trust land obligations and the statutes that attend to that, the Multiple Use Act, the Public Trust Doctrine which applies to the aquatic land ownership, and the Natural Areas Acts for NAP's and NRCA's.

Ms. Bunning said that a new feature of the rules is that they provide the establishment of use when needed to control capacity of certain sites on certain weekends, at certain sites and in

certain instances capacity can be out of control and the Department needs to have the ability to manage popular sites when necessary.

Ms. Bergeson asked for an example of how the Department would address managing capacity.

Doug McClelland said that the Department did a recreational analysis in the Tahuya State Forest working with recreational professionals on what type of experience is needed and how many people can be on each mile of a trail. They established a number and figured out what size of parking area was needed to make the experience appropriate. The Department is developing parking facilities that accommodate the number of vehicles that could use the trails and have the right experience. Capacity management would only be used as a tool at a developed facility, not trails in general at this time. If the area could only hold a hundred cars the public might consider coming at a different day or time in order to get a parking space. He said another way to manage capacity is during events so that the forest isn't overwhelmed for regular users. Right now the rules only address the facility parking perspective.

Mr. Kaino read the capacity section in the updated rules, "A person shall not enter any developed recreation facility or bring in or cause to be brought in any motorized or non-motorized vehicle or persons which would exceed the established capacity set by the Department." He said that he interpreted that to mean that they are setting the capacity by parking spaces. He asked if the Department is paving and lighting these parking lots.

Mr. McClelland saying that the Department is, in places like the Tahuya.

Mr. Kaino said that he assumes that the Department will still have many unpaved parking areas and asked if he could assume that if the parking spots are full the recreation facility has reached its capacity.

Ms. McClelland stated that assumption was correct.

Mr. Kaino asked if a school bus lets out 20 children, if that constituted a crime.

Mr. McClelland said that these rules are very similar to the rules used by State Parks. The Department would have to post the vehicle capacity for the site. The Department is not referring to people it is referring to vehicles. If a bus arrived with several people and there was a parking space available they'd be fine, if not they would need to go somewhere else.

Mr. Kaino asked if you could drop people off and park in a different space.

Mr. McClelland said that would be fine; the issue is events in a place like the Tahuya where on the weekends, in the spring and the fall in particular, the capacity is being overwhelmed and the Department recognizes that it needs to start managing that.

Mr. Kaino said that these are issues that could come up in certain areas. He said that he thinks that this is one of the most well written documents he has seen in a long time. He said that it is

easy to read and understand and almost anyone should be able to read it and clearly understand what it means. He said he had read through the rules update document several times and he only had a couple issues that he thought needed further discussion. He commended the staff who wrote the rules for the good job they had done.

Chair Sutherland asked Mr. McClelland what could be done if there is room for 100 vehicles to be parked in an area and vehicle number 101 pulls in and parks outside the parking lot and complicates or overloads the parking area.

Mr. McClelland explained that the rules are strongly focused on the Department telling people what they can do. Posting is a key part of the rules whether it is access to a trail, capacity for parking, or where the public can or can't go. If there is an area where there are problems with access to parking, the Department needs to post "No Parking" signs. He said that capacity issues are usually linked to events. DNR needs to work on making sure there is parking for special events and how they get scheduled so it doesn't overwhelm the forest. He said that everything within the rules requires the Department to clearly show the public what the rules are by clearly posting signs, on the web, maps, and kiosks, or it won't be successful in writing citations.

Chair Sutherland asked if a citation could be written to car number 101.

Mr. McClelland said that could happen but he doubted that it would.

Chair Sutherland asked what would happen then.

Mr. McClelland said that if that situation arose there would be education enforcement officers available to help people figure out where to park and they could help the Department figure out how to manage the situation differently, possibly by shifting people to another place.

Mr. Kaino said that his concern wasn't so much with the events and he felt that the Department had laid out the requirements for events very well and capacity could be controlled through the permitting process. His concern was in 332-52-105 (b); the Department is not going to have any enforcement options on the trails. He said that his concerns are with the definition that says "cause to be brought in persons." He said the rules read that the capacity is going to depend on the parking area size and anyone who comes in or causes to bring people in over that capacity is in violation. For example if a school goes on a field trip and it's a 3 or 4 car parking lot that's full and the school bus lets the kids off, they are in violation.

Mr. McClelland asked the Board to think of it in a different way; if there is a capacity limit of eight people to a campsite, it would be posted and people would understand that. These capacity limits would address vehicles, not the number of individuals. The Department would have to post that measure of capacity to that specific site. He said that there are no current capacity signs or areas that the Department manages for capacity.

Mr. Kaino said that he accepts Mr. McClelland's interpretation of what the language means, but he is not sure that it will be interpreted that way in the future. He said that the more the Department leaves open to interpretation will open up a wider array of how they may be interpreted. He said that the way he interprets the language that is that bus lets the kids off to walk the trail and the parking lot is full they are in violation.

Ms. Bergeson reiterated that was the original question.

Mr. McClelland replied that it is not a violation; the capacity the Department will use is for facilities.

Ms. Bergeson summarized that the Department is going from increasing problems on multi-use recreational places, where the Department is beginning to have large problems, to try to come into an informative, collaborative process to get people to use their common sense, and to look at reasonable objective definitions of what this land can handle in terms of use. She said that if the kids were dropped off where there are no campsites to set up tents that's one thing; Mr. Kaino's example was dropping them off to walk a nature trail, so the parking lot capacity is different than how many people will be utilizing the trails.

Mr. McClelland said that was correct.

Ms. Bergeson said that she hoped the language would make the distinction between the two capacity issues. She said that Mr. Kaino was pointing out that if someone got into a literal definition of this paragraph they are going beyond what Mr. McClelland had described to the Board about what is meant by access. She said she is not sure how to re-word this.

Mr. Kaino said that what Mr. McClelland says it means is not what it says.

Ms. Bergeson said that Mr. Kaino complimented the clarity but this is a place where it is not clear.

Mr. McClelland asked Mike Rollinger, the attorney that has worked with them for the past four years, to address the questions.

Mike Rollinger, Assistant Attorney General approached the Board to address Mr. Kaino's question. He explained that he has worked very closely with DNR the past four years to develop the rule updates. He explained that it is extremely difficult to word or properly draft a rule or laws that are easily understood by everyone. He said it is also not easy for the legislature to draft statutes that are easily understood. He explained that this section is designed to give the Department the ability to limit either the number of people or the number of vehicles in any given location on public lands if the Department chooses to use this authority and limits the capacity to 125 people, no more than 125 people can be at this trailhead, and a bus comes in and they are carrying 126 thru 190 then they would be in violation of this rule. He said he wanted to make the distinction that the penalty is identified very specifically; so violating the capacity limit would be a civil infraction. If there was a law enforcement officer or someone

with authority to write a citation on site when the infraction happened, and they felt it was a significant enough violation to cite, then they would be cited with a civil infraction, not criminal. That person would have due process rights to challenge the citation if they chose to do so.

Mr. Kaino asked if it would be more like trespassing.

Mr. Rollinger said it would be a civil trespass, similar to a non-criminal traffic citation. The Supreme Court establishes a schedule for the various monetary penalties and he thought for natural resource infractions that are not otherwise designated in that schedule the default is a \$42.00 penalty. He said that there are a number of safeguards in place; the judgment of the law enforcement officer, whether the person chooses to challenge it, and if they do, does the prosecutor want to take the time and effort to defend or prosecute it, and ultimately is the person going to have to pay. If they do there is no record of it. He said it is important to have that context in mind because the violations of other sections do result in misdemeanor offenses.

Ms. Bergeson said that Section A states that the Department is limiting capacity based on parking spaces and/or campsites, and that Section B addresses vehicles and people. She said that she understood Mr. Rollinger's explanation to mean that if it is the people it's because it is a campsite, and if it's the vehicles it's a parking issue. She said that if the Department added "that would exceed the established capacity of parking or campsites as established or set by the Department" the definition issue Mr. Kaino talked about would be resolved.

Mr. Kaino said that he would be the first to support the goal and intent of what the Department is trying to do, and he would be the first to say that the likelihood of someone getting a ticket for one of these issues is remote, but at the same time he doesn't think the Board should adopt something that doesn't have clarity.

Ms. Bergeson said that when she looks at A & B together it makes perfect common sense that there are two different situations being discussed. She said she thinks the Department has done a magnificent job in taking on the complexity of doing something where nothing has been done in thirty years to try to bring about an end goal. She recognized the volunteers, user groups, and people who care deeply about using these places with their families who have worked in partnership with DNR to put these rules together; the Department wouldn't have been able to do this without them. She said that she thought that with a few simple word changes the issues could be resolved. Ms. Bergeson said that she thinks that the public is paranoid because they have worked with current DNR staff that they know care about what they are trying to do and partner with them, but as Mr. Kaino said in the future new staff may interpret this beyond what the intention is today.

Mr. Rollinger said that is very important to take the ten public hearings and the hundreds of comments that DNR has received on these rules into consideration. He said he did not recall any comments on this particular section. He said that DNR worked diligently to respond to the concerns of the comments on other sections in terms of clarity and what they meant. He said there is no such thing as a perfect set of rules because it is so painstaking and it will never be perfect. When he looked at the DNR statutory framework for trespass, it literally states that if

you take one grain of sand from state land you can be prosecuted for trespass, if you take a twig from public land you can be prosecuted. He said that the Department is not going to be able to include or incorporate every exception or clarification. It comes down to a question of where the Department draws the line and if it feels the language is clear enough. He appreciated the comments about the clarity; if they don't work or cause problems the rules can be amended on an annual basis or sooner if the Department chooses.

Mr. Kaino said that there are a lot of these lands that have gates or tank traps; for example if a person were to go to South Nemah NRCA during hunting season there would be fifteen vehicles parked on the road right up to the gate leaving barely enough room for one to back out. They are all hiking into the NRCA to go elk hunting.

Mr. McClelland said the only concern would be that they do not block the gates in case DNR employees need to get through it. That would be the only rule to apply there because that is how we use most of the Department's managed lands.

Mr. Kaino said that if you take the literal reading of this it doesn't comply.

Mr. Nichols said that because the comments were not made in a public hearing that it doesn't preclude a Board member from asking questions. He said he needs a context because he sees new section language that suggests it is all new language. He asked if there was a PowerPoint presentation available.

Ms. Bunning stated that there was no PowerPoint available.

Mr. Nichols said that when he read the new section he assumed it was new language, however, when he read the SEPA summary it suggested that the language was pre-existing. He said that the language does not match up and he can't tell what is new and what's old; what's being changed versus what is inherited from the past. When he reviewed the 1999 document he assumed they were the old recreation rules, he is confused about what the overarching context is and how to read it.

Mr. McClelland suggested that it may help to go through the level of the packets and then present the question phase.

Mr. Nichols said he wasn't sure if that approach would help because it seemed as if they were digging into specific issues on the WAC and he wanted to know how it fit onto the overall context.

Ms. Bunning suggested they give the context.

Ms. Speaks addressed the Board to go through the packet in an attempt to help them understand how it was put together. She said that the Department has been working on the rule updates since 2004 and there have been a number of versions and iterations. She explained that under the rule making process the Department has the opportunity to develop language for

proposed rule change that gets published for the public under the rule-making process; that is what the changes are being made to. She reviewed the packet. She explained the summary of all the public hearings since the process began. There were nine hearings held across the state in June and another in November to take comments on the proposed rule language. The purpose of the hearings in June was to take testimony and comments on the first iteration of the proposed WAC rules. She explained that the Notice of Final Determination is a SEPA document. The Department also issued a SEPA Checklist, Determination of Non-Significance and a Non-Project Review Form; they have already been issued and completed but the Notice of Final Determination is the final document; the changes that were made to the first draft of proposed rules are in the document and were published in May of 2008.

Mr. Kaino asked if those were proposed changes to the first draft not the previous rules.

Mr. Nichols said that was the missing link.

Ms. Speaks said that the Board members had received an updated version from the version that went to the public in June; after the November hearing more changes were made and that is the version they received in their packet. They received the final version except for one thing that she would review with them. She noted that on the back of the document that they received there were several repeals which were repealing almost all of the sections of the rules that are presently in existence.

Mr. Nichols asked if those were the 1999 rules.

Ms. Speaks said that they were the 1999 rules; there had been one minor update in 1999 but they had not been changed in any significant way since 1970.

Mr. Nichols said that information helped him to understand the context.

Ms. Speaks continued to say that in the rule language that was sent in the board packet there was one omission that should have gone on page 28 under "anchorage." She directed them to the blue errata sheet and one sentence under Section 155(2) stating "persons shall observe restrictions specific to the locality." She explained that the sentence was added for clarity so people would understand if they were anchoring or using mooring there might be specific restrictions for that locality. Ms. Speaks noted that next in the packet were the old rules titled "332-52 Managed Lands and Roads Use Of." Next in the packet was a version of the rules that were published after the June hearings. There were hearings in June and comments were received, the Department took those comments into consideration and made changes that were published in October of 2008 to receive more comments. She explained that the document dated 10/10/08 in the Board packet was the interim version of the second draft.

Ms. Speaks explained the reason for giving the Board members the interim draft was that it had balloons that explain the reasons for all the changes based on the comments received during the June/July comment period.

Mr. Nichols said that he only received the December 18th version and asked how it compares to the October 10th draft.

Ms. Speaks explained that the December 18th version has some minor changes and is the version with the balloons that explains all of the changes that were made to the October version. She noted that the Board also had a document numbered OTS-195.71 and another numbered OTS-1442.3. She explained that OTS-195.71 and OTS-1442.3 together are the final proposed rule language that the Department is asking the Board to approve today. She said that the reason they are in two documents has to do with the Code Reviser and the typing service and how that all fits together. She noted that the resolution indicates that there are two attachments which are these two documents.

Mr. McClelland said that the December 18th version is the final document and the only difference is the one change about moorage. He said that the one the Board members read was the final version; because of the complicated process they had to review all of it.

Mr. Kaino said that he will not vote to approve the document if there is not at least one change that he sees he cannot support. There is going to be a new version unless the Board adopts it exactly as is, in addition the Board received public comment today.

Ms. Bergeson asked if they are being asked to act today.

Ms. Bunning replied that the Department is recommending action today.

Mr. Kaino said that in light of the public comment it heard today it may choose to follow up.

Ms. Bunning asked Mr. Rollinger if simple clarifications that don't change the substance can be woven in and approved subject to those simple clarifications.

Mr. Rollinger said that could be done.

Ms. Bergeson asked Mr. Kaino if they could address his issue with Section 105 in that manner.

Mr. Kaino said they could but he also had another issue of substance.

Mr. McClelland suggested finishing the presentation then moving into questions.

Ms. Bunning provided highlights of some of the new elements; tools that the Department feels it needs to better manage the public lands and activities that take place on them. She addressed target shooting, a new category to the public recreation rules. The rules explain safe target shooting, describe what can and can't be used as a target, and require disposal of spent items. Next she addressed recreation events. The 1970 rules had language that applied only to Capitol State Forest and no other parts of the state. The updated rules provide consistency across the state and defines that an event is a planned activity with 25 or more people requiring a permit. There may be other limitations and elements to that based on local conditions. Once

an event falls under the permit category the Department can lay out the details. Ms. Bunning talked about campground and day use facilities. This section addresses the length of stay, how campsites can be used, specifies campfire requirements, firewood collection, establishes quiet hours and makes clear that use is on a first come first served basis. There have been a couple of places where the Department has needed to use a reservation system. The section also addresses pet and livestock management in campsites and on certain types of trails and natural areas.

Ms. Bunning talked about water recreation facilities; she recalled that they apply to the state owned aquatic lands. Moorage is on a first come first served basis; it sets the limit on length of stay, size of vessel, commercial use and the number of vessels.

Ms. Bunning moved to the section that addresses the use of roads and trails. She said that this section has received numerous comments and the Department has tried to be very clear about how these facilities will be used and managed. She said that there is concern that the Department has roads and trails "closed" unless posted open or vice versa; in reality the current rules have everything closed unless it is posted "open" which is not a workable solution. The effort is to recognize that people need to know where they can and cannot go and the Department has a responsibility to make that clear by posting. This can be done on the web, signs, or on maps. The Departments goal is to make as much recreation possible while remaining consistent with land management. The language designates use types so the Department can designate motorized, non-motorized; it provides the ability for the Department to establish traffic control measures. The language talks about the methods of closure that could be gates, signs, large berms, tank traps, or other mechanisms to prohibit use. It also addresses off-road and off-trail use by motorized or mechanical vehicles. It specifies leaving and entering recreational facilities which is an attempt to control the spread of use beyond the campsite itself.

Ms. Bunning continued on to talk about trail construction and maintenance and when maintenance of a trail can happen in an emergency. The language anticipates the close connection the Department has with volunteer groups. It allows the Department to establish basic speeds, rules, parking and has a section on snowmobiles.

Ms. Bunning moved on to the Milwaukie Road corridor. She explained that the Department has a section in the Central part of the state under its management; State Parks have the rest. The update includes requiring a recreation permit on the trail, it is open year round, there are restrictions on campfires, and hunting and target shooting to be respectful of the animals, and the people that own the land and live along the trail.

Doug McClelland reviewed the summary of hearings. He said that the Department started with two methods of determining what it should do with the new rules. Staff conducted four meetings with an advisory group in 2006 who looked at the old rules and provided suggestions for the updated rules. Next, there were eight public meetings held around the state to get ideas from the public about what should be updated in the rules. Next they met with stakeholders and user groups to develop the draft that was submitted in May of 2008. In June 2008 there were nine

meetings around the state, from that staff developed an updated draft and held one more meeting in Issaquah in November 2008. He said there were 344 people at the first ten hearings in 2008, 203 attended the June hearings; the Department received 87 oral testimonies and 203 written comments. At the November meeting in Issaquah there were 41 people in attendance, 18 gave testimony and 56 more written comments.

Mr. McClelland said that from the May 2008 draft 70 changes were made from the testimony received. He said that some of the comments were out of the scope of the rules update. He explained that the language talks about behavior on managed lands, not how the Department manages the lands, or how we make management decisions.

Mr. Nichols asked how common it is for WAC's to be put in a Q&A format.

Mr. McClelland said that it is a new recommended method; one that the Department decided to use. He explained that rules have to be understood or they are not effective.

Mr. Nichols said that he wanted to address subsection 135 on campfires. He said that he was struck by the level of detail that the Department went into to regulate campfires by WAC as opposed to other sections that seem to be more consumer friendly or allow Department staff to make regulations and exercise reasonable judgment, or the people exercise reasonable judgment. He said there is that kind of sense elsewhere but the campfire section is very detailed and overly detailed.

Mr. McClelland explained that the campfire rules are a mirror of the existing fire regulations; in a designated fire ring, in a fire outside a campground. He said there are other rules that lead on the width and height of a fire and what the fire enclosure might be like. Those are rules the Department enforces and this language is a repeat of the existing rules.

Mr. Nichols asked where that is enforced.

Mr. McClelland said in any campfire that you would build in a campground. He said there are size limits to campfires in the current fire rules.

Mr. Nichols asked why they are in this update if they are already in the rules. He asked what rules Mr. McClelland was referring to.

Mr. McClelland replied that they are in the existing fire rules and the reason they are in the update is because when someone comes to Department managed lands it is easy for them to understand what the campfire rules are.

Chair Sutherland said that Bob is asking what rule that is.

Mr. Rollinger explained that it under Chapter 76.04, the Forest Protection Act (FPA). He said these are rules that implement the statute under the FPA. They are designed to limit the potential for forest fire.

Mr. Nicholas asked if that was for campground lands.

Mr. Rollinger said that it includes recreational campground fires as well.

Mr. Nichols asked why it is being included if it is already in the statute.

Mr. Rollinger said they are not identical in nature, these are more detailed.

Mr. McClelland said that the landowner has to give permission to allow a campfire on their land. If someone is following these rules then they are given permission to have a campfire. He said it is very similar to what Oregon Forestry and Washington State Parks have.

Mr. Nichols said he is confused because it is similar to what is already in place.

Ms. Bergeson said it seems repetitious.

Mr. McClelland said it is very specific to the size and height within a campground; specific to the diameter.

Chair Sutherland said that if you look at the recreation activities on state trust lands, people would go to this set of rules as opposed to the FPA rules. Even though they might be quite similar it is important that it be part of the recreation activities and the behavior the Department is asking people to pursue relative to campfires.

Mr. Nichols asked if DNR were liable. He said that in most campgrounds the picnic table which is flammable material is within ten feet of the campfire ring. What if there are branches hanging down over the campfire ring, would DNR be liable. He suggested language that says to exercise reasonable judgment to reduce the danger of fire spreading, and then the Department should post what these considerations are. He said this is a far more friendly way of having a camper come into a campground than telling them they have to have a serviceable shovel and a minimum of five gallons of water.

Mr. McClelland said that is in the law.

Mr. Nichols asked if people who camp at a state campground without a shovel and five gallons of water are dodging the RCW.

Mr. McClelland said that was correct.

Ms. Bergeson said that the Department can't change the law.

Mr. McClelland said that the Department knows this is already out there but because fire is one of the biggest threats to state lands it felt that it was important to tell people. He said that people come in with flats of pallets to build a big bonfire in the little three foot diameter fire ring

causing damage or a potential threat; that is what the Department is interested in. In order to take action in the dangerous times the Department needs to describe how high and wide the flame can be.

Mr. Nichols said that he understands that they are in the RCW but he is confused about why the Department is repeating them.

Mr. McClelland said that they are repeating what is in the RCW but portions of them are clearer about what is acceptable in DNR campgrounds.

Mr. Nichols said he would like to see the contrast between the two. He said that he gets the sense that some are in the RCW and are being repeated, which is the legislature's prerogative. But he also gets the sense that perhaps these WACS are over and above what's in the RCW as far as campfires.

Ms. Bunning said that from the enforcement perspective there are two levels. The fire rules are there because recreational fires a significant cause of wildfires that get out of control and may burn timber forests. The liability for fire suppression costs fall to the person who caused the fire. She said there is also enforcement capacity under these rules for having a fire that doesn't fit the rules. One is built on the potential for escape and the other for citation for not following the rules. She said she understands Mr. Nichols concerns as a camper not wanting to be enforced for having one log that is too large.

Mr. Nichols said that part of the camping experience should be a feeling of freedom and the campfire rules struck him as being overboard. He said if it's in the RCW then it's the law.

Mr. McClelland said that the RCW states that you cannot have a fire outside of a designated campground in an approved fire ring without the land owners' permission; yet we all know that there are fires out there all the time that are in violation of the present RCW.

Mr. Nichols said he understood that as part of the more generic issue but this goes into far more detail.

Ms. Bergeson asked Mr. Nichols if he wanted the minimum amount of detail.

Mr. Nichols said not the minimum but there are a few things that seem overboard to him. He'd like to have the contrast between what is in the RCW and what applies to a recreational campfire.

Mr. Rollinger said that what is in the statute talks about negligent fire spread from a campfire which is very broad; there is the implementing WAC to that that provides the detail about what can and can't be done in terms of a campfire. He said that this rule is a bit more detailed than the WAC that relates to the FPA and from a user perspective a user may find this to be restrictive but from a landowner perspective one of the purposes for having this level of detail is to act as a prophylactic to protect DNR as a landowner if there is a negligent or careless camper

who goes in and starts a campfire that spreads. DNR can say these were the rules they should have followed and had they followed them the fire wouldn't have spread therefore there is much less likelihood that DNR as a landowner would be held liable for allowing campfires on its lands without following those restrictions.

Mr. Kaino asked if the restrictions were in place in the primitive campsites where there were limbs growing down within ten feet of the campfire ring; since the Department doesn't allow people to limb its trees and a fire started would it be a liability for DNR, or the person who started the fire. He asked who was responsible for maintaining that ten foot area around the campfire area.

Mr. McClelland said that the responsibility is on the person who lit the fire; they need to know it is safe before they build it. He noted that in 135 all of Section 3 a, b, c, d, e, f are all in the RCW or WAC's with regards to fire.

Mr. Nichols said he would like to get one RCW and then a WAC. He said it would be easier for him to see them and compare them

Mr. Kaino said that he has an issue with rule 1442.4, 300 (14) (f) that doesn't allow camping within two hundred feet of any body of water. He said he has had several calls about it. He said many people hike up to mountain lakes and pitch a tent on the banks of a lake. He said that this language tells people they can't camp along a lake or stream unless it is a pre-existing campsite.

Mr. McClelland said that there are an adequate number of pre-existing campsites and this relates to the Habitat Conservation Plan and disturbing new areas within the two hundred foot zone that DNR is managing for riparian habitat. He said there are thousands of pre-existing sites.

Mr. Kaino asked for the definition of "pre-existing."

Mr. McClelland said it is where other people have camped before; where there is evidence of a fire ring; where it has been established as a camping area and has already been compacted and established. He explained that the intent of the rule is not to clear and build a new campsite beyond the ones that are already there.

Mr. Kaino asked if there was a patch of grass near a lake, could a person pitch a tent there.

Mr. McClelland said that was fine as long as there was no riparian habitat with important vegetation.

Mr. Kaino asked if a person could pitch a tent on a gravel bar in the middle of the Newaukum.

Mr. McClelland said that is the best place to put a tent from the leave no trace principle, which is the intent.

Mr. Kaino said he felt this language could be taken out completely and not impact what the intent was. He said if a person could set their tent up on a rock bar in the middle of the Newaukum how are they to know if that is a pre-existing campsite or not.

Ms. Bergeson asked what the purpose of "f" was.

Mr. McClelland replied that the purpose of "f" is to protect riparian habitat; also to tell people to camp in pre-existing campsites.

Mr. Kaino said that no one would read that and know they could camp on a rock bar in the Newaukum.

Ms. Bergeson asked Mr. Kaino what would solve his issue.

Mr. Kaino said it needed to be taken out.

Ms. Bergeson said that she wanted to resolve this because she did not want it to take another five years to complete the rules.

Mr. Kaino replied that he would rather do them right than quick.

Ms. Bergeson said that from what she heard there were two purposes; one being pre-existing campsites and the second was protection of the riparian areas. She asked what could be done to resolve Mr. Kaino's issue.

Ms. Bunning replied that it is possible that if "f" were deleted a, b, & c could be relied on to attain the protection of riparian areas.

Mr. Kaino said that you could rely on the other areas regarding human waste. He said there are several other sections that address those issues.

Ms. Bunning said the Department would be relying on "more than incidental removal of damage to vegetation, in a manner that unreasonably removes or disturbs soil or where camping is restricted or designated to campsites only." Where there was a popular camp place it would be good to put up a sign.

Mr. McClelland said that if there was a place that was very sensitive the Department could post a sign that stated camping is prohibited within two hundred feet of the water for these reasons.

Ms. Bergeson said that there may be a way to make a stronger statement in the introduction saying that the purpose of these rules is to remain compliant with the HCP for riparian areas, and to make sure the Department is preserving the land for recreational purposes. She said that making a stronger statement in the introduction will lay out the purpose of the rules.

Mr. Kaino said he thought that staff did an excellent job on the rules and that the Board has not had an opportunity to ask questions.

Mr. McClelland said that the Board did get the chance to read the rules at one time and did ask some questions and the refinements that have been made since then were the next step. He said that at some point in time the rules need to be passed so the Department can go and "road test" them to see what works and what doesn't. The Department should be coming back to the Board every year or two to make changes to the rules, which is what State Parks does on an annual basis or every six months in a variety of ways. He said that even though it has taken the Department four years it should be able to do it in a matter of months next time. He said that they could delete "f" if that is what the Board decided it wanted.

Mr. Kaino said it would have to be deleted to get his vote.

Mr. Nichols asked for a definition of reasonable quiet and unreasonably disturbed. He said it is preceded by the notion of generators and if there are any questions or concerns expressed about that. He said he was struck by the broad discretion there and then the campfire section was very detailed. He said he wants to know if there is more definition to what is reasonably quiet. He said there is discretion by any enforcement officer that it could be too loud

Mr. McClelland said Mr. Nichols was referring to Peace and Quiet, Section 130.

Ms Bunning said the rules do specify certain things that are not acceptable during quiet hours like operating electric generators, loud boisterous behavior, playing radios or musical instruments, mechanical devices in such a manner, at such a time as to unreasonably disturb other persons.

Mr. Nichols asked if this is the equivalent or is there additional judgment by anyone coming in.

Ms. Bunning replied that first the people who may make the complaint are using judgment, also the enforcement personell who would make the judgment call about whether it is over and above what is acceptable. She said there is discretion about the enforcement.

Mr. Rollinger said that if the Board looks at the two potential problems that the rules are designed to address it is easier to provide a prescriptive set of rules as to what safe practices are as they relate to starting and extinguishing campfires as opposed to disturbing your fellow human recreationalist on the property. He said it is not easy to define that what is an unreasonable disturbance to one may not be unreasonable to another. He said it is a judgment call on the part of the person who complains and the law enforcement officer, and ultimately if the person wants to challenge the fine they could argue that it was reasonable. He said to define a specific set of circumstances is difficult because it is all situational.

Mr. Nichols said that more complaints will occur under the noise issue than violation of the fire rules.

Mr. McClelland said that in DNR campgrounds there are problems with both. He said the Department receives letters and personal complaints about behavior that occurs in campgrounds. He said the resources to enforce them are difficult but the Department needs to have the tools to do that.

Ms. Bergeson said that staff did a great balance providing a description of abusive behavior, and disorderly conduct; there has to be some discretion. She said if a bunch of young kids are in a campground alone, they could raise hell all night long and no one would care. But if they are in mixed company and are disturbing people there has to be a judgment call and she felt there was a nice mix of that.

Mr. Nichols said he didn't think it was an unreasonable section.

Ms. Bunning said that they wrote the fire section in conjunction with the fire prevention staff in the Department. She said it is really about wildfire prevention and what it takes to make sure there is no risk. This is a different perspective than rules that campers have to know and obey as a lone camper with a small fire at night. She said the reason is to prevent wildfires that escape by trying to make it as clear as possible what needs to be done using the laws and rules that already exist.

Ms. Bergeson said that the Department had juxtaposed the two purposes in that section; the larger purpose being the "protection of the landowner to preserve the property and make sure that fire protection is paramount," and then the behavior of the campers in the campsite. She said that this may be one area where there may be too much restriction and the Department may come back later to make changes. She said that she thought that the conflicts will arrive when future staff may go overboard and upset people who are recreating which will then become a personnel issue.

Mr. Nichols said that written like this the enforcement officer has no choice but to cite the person who is recreating if they don't have a serviceable shovel or five gallons of water on hand.

Mr. McClelland replied that an officer would have discretion based on the circumstances to issue a citation.

Mr. Nichols suggested adding language to suggest that be encouraged.

Mr. Rollinger said that part of the problem is that there is a pre-existing WAC that is very onerous and very few people know about, which is one of the reasons why parts of it are repeated in this set of rules because this set is more likely to be looked at than the FPA set of rules. He said that massaging this language is not going to cure the problem because there is a pre-existing WAC that specifically requires a lot of this stuff already.

Mr. Nichols said he is still confused between the RCW, the FPA and this WAC and he would like to know what's in what.

Ms. Bunning said they would provide that.

Chair Sutherland summarized that the Board would like to see the comparison Mr. Nichols asked for, it would like to see if the language on camping is appropriate or if it should be removed and the inclusion of the addendum on the aquatics' sentence.

Ms. Speaks said that the inclusion of the addendum on the aquatics' sentence was already in the rules.

Mr. Nichols said that he liked Ms. Bergeson's suggestion about adding the purpose upfront. He also wanted to see the fire issue addressed because that was implied but was not explicit.

Mr. McClelland added that they also needed to address Mr. Kaino's issue on capacity.

Mr. Bare said that still leaves the questions that were asked about section 400.

Mr. McClelland said that the existing rules state that all trails are closed unless posted open. The suggested change means that the Department needs to let people know how and where they can go by posting them. The posting can take place on the web, signs or by other means. The new rules are less restrictive than the present rules. The existing rules don't send a very clear message so the Department made a decision to put the burden on itself to let people know where they can recreate. He said that when a road or trail is closed it is pretty obvious that a large stump or berm is meant to close the trail. He said the definition of posting is very clear and is throughout the document many times.

Mr. McClelland said that the Department worked with several user groups to re-write Section 405 – Trail Construction. He said that construction and maintenance of trails and structures is a new section. He said there are no existing rules that talk about trail construction. This is the first time the Department is telling the public to not build anything on its land without getting written permission beforehand. He said that everyone understood this and understands that trails had been built in the past but now they need to consult with the Department first. The Department also asks that if volunteer groups want to conduct trail maintenance on a routine basis they need to work with the Department under a volunteer agreement which protects the Department in the liability sense and it gives the volunteers Labor & Industries protection as a volunteer working for the Department. Section 3 relates to emergency work. People are encouraged to continue emergency type actions.

Mr. Kaino said that he doesn't think the rules are unreasonable. He said not only is he an ORV owner; he is also a forest land owner and he knows how the trails get built. He said that it is important that any trail construction needs to have permission and there needs to be some type of leverage to prevent trails from being run through the Department's plantations when it's five or six years old.

MOTION: Jon Kaino moved to approve the Recreation Rules Update Resolution 1283 with all suggested amendments.

Bruce Bare suggested that the Recreation Rules update be moved to the February meeting for further clarification.

SECOND: NONE.

ACTION: Resolution 1283 was not adopted and the item is moved to the February agenda. Mr. Bernardo asked for a better definition of a "berm" or "intended structure to limit access" on page 44. He said it isn't clear; when one is clearly blocking the trail and there are all kinds of berms, the person who wants to follow the road may not know that they have access past that point.

Mr. Nichols asked if there is any follow up discussion from the two gentlemen who provided comment.

Ms. Bergeson said she wanted to address one more thing in Section 405 before returning the discussion to address the issues raised by Todd Peterson and Ben Wells during the public comment period. She said that she thought the language was clear about not building a trail and not doing anything that dramatically changes a landscape; she asked them to speak to the civil misdemeanor and how they would arrest someone.

Mr. Rollinger explained that subsection one in 405 is designed to deter that. He said if subsection one is violated and it is cited it is a potential misdemeanor offense. The Department looked at various sections of the rules and made the determination about which ones potentially cause the greatest harm to other people, or to the land, or to natural resources; which rules do they want to have greater enforcement capability and which do they want to provide a greater and general deterrence and this was one of them. He said he observed an extreme mountain bike course that was developed under the cover of darkness. Those are the types of things the Department doesn't want to happen on its land. It wants to be able to have the enforcement mechanism to cite people with a misdemeanor offense, if they are identified. The person walking through the woods more than once creating a trail will most likely not be cited; it is an issue of common sense and discretion on the enforcement officer's part.

Ms. Bergeson said that in terms of importance the first section focuses between noise and fire. She shared that on one of the Board retreats she saw evidence of people creating all kinds of trails that were beyond multi-use; people were creating trails all over the land with dirt bikes and causing significant damage and ruining the ability to maintain the multi-use. She said the first paragraph tells people they can't do that and she did not hear the two gentlemen disagree with that. She said that section two and three give the openings for the kind of actions that are routine which is what the Department's partnership with recreational groups would be. They collaborate with DNR to create or maintain trails. In subsection c, if they see an emergency they can do the minimal care to take care of it and then notify the Department.

Mr. McClelland said that they can just do it.

Ms. Bergeson said that the Department has opened up the two most common avenues where people might be doing something with a trail and made it clear that it's OK. She said she was trying to get at the fear of jail and the kid walking through the woods

Mr. Rollinger said that the more the language is massaged the harder it is to get a prosecutor or judge to convict because by trying to carve out exceptions you create more problems than are resolved.

Ms. Bergeson asked them to go back to the introduction section and add more in the purpose section that talks more about the problems the Department has to address in more detail. The intention of the rules is not to preclude access to the lands or incidental cutting of branches, but something serious about people damaging the land and that doesn't need to be tied directly, because if I am a prosecutor I have language in paragraph A but in the bigger purpose I can give the Department staff.

Mr. McClelland said that after the rules are adopted staff will be trained in how to post clear signage so people can understand. He said the implementation is important.

Mr. Nichols asked if this is written so the prosecutors and attorney's can win a case or is it written to educate and give DNR enforcement officers a better handle on curbing abusive behavior. He said the end result would be successful conviction if needed but he agreed with the discretionary, good judgment language that Ms. Bergeson mentioned to take the edge off.

Mr. Kaino said that the fact of the matter is that the primary intent of this is not to catch the kid who took his motorcycle off the road intentionally, but to give him some leverage to let him know not to do it again. He said that 99.9 percent of the time when people violate these laws and get caught, they are going to receive a warning.

Ms. Bergeson said that she doesn't think the introduction is strong enough and that more needs to be said about the expanded use of the land and the fact that problems have arisen so that 99 percent of the time recreation users are a part of the solution; there are problems that need to be addressed and the Department has tried to find a good balance between making it very clear what is harmful and may cause danger and also clarity for the users can know how to self police.

Mr. Kaino said that the Department is trying to write rules not a story, and he said he understands the point she is trying to make.

Mr. McClelland said that the Department can provide the Board with options.

Mr. Bergeson thanked the staff and the gentlemen who testified. She said the staff did a great job on the rules.

Review of Canoe Tree Sales

Jed Herman explained that he had been following up on the questions the Board asked last month. He is trying to set up a meeting to get answers to those questions; he will bring additional information to the Board soon.

GENERAL COMMENTS

Bob Dick, American Forest Resource Council approached the Board. Mr. Dick said that he has been attending the BNR meetings for the 33 years and this has been the best Board of Natural Resources he has witnessed. He commented that they are committed to the principles of trust land management and have made sound decisions even when the results were unpopular. Mr. Dick said that Commissioner Sutherland and Ms. Bergeson leave a legacy; a standard of excellence, setting the bar for developing public policy. Mr. Dick said it has truly been the best he has seen. He wished them both well and said it had been a privilege working with them.

Chair Sutherland recognized Terry Bergeson for her 12 years of service and dedication to the Board of Natural Resources. He presented her with a plaque and DNR jacket, and thanked her for serving on the Board of Natural Resources.

Ms. Bergeson thanked Chair Sutherland, his staff and the Board members for helping her to learn along the way.

Ms. Bergeson shared some statistics of Chair Sutherland's administration and presented him with a pair of DNR flannel pajamas. She thanked him for his leadership and management, and applauded him for building a culture where he has allowed people to do their jobs. Ms. Bergeson told Chair Sutherland he has left a great legacy.

Chair Sutherland said that was intention and purpose and he couldn't have done anything without his staff. He said he has been fortunate to manage in a large corporation, his own business for 20 years, managed a brand new city, a large county and had the opportunity to deal with many complex issues. He said that managing DNR has been an exciting and exhilarating experience because the staff is willing to go beyond what is asked of them. He said that success also comes from the Board.

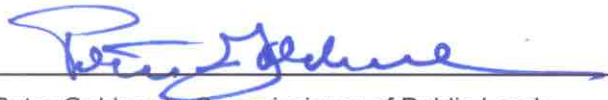
Mr. Nichols said that the Board has never had two members leave at the same time. He said that it will be a significant adjustment for the Board. Mr. Nichols said that has enjoyed working with Ms. Bergeson and the opportunity to share her sidebar comments. He thanked Chair Sutherland for his diverse perspective and collaboration saying that his fairness and even-handedness has allowed the Board to blossom and he has appreciated that.

Mr. Bare said that it has been a pleasure to serve with two statewide elected officials. He said he appreciated working with Terry because she has a marvelous capacity to probe and find answers to questions and she is a tremendous intellect when it comes to understanding the trust mandate and that came through as she promoted sustainability. He also thanked Chair Sutherland for his direction to the Board, and for giving his time and advice to the College of Forest Resources. He said he would miss Chair Sutherland's leadership on the Board.

Mr. Kaino said that he has developed a great deal of admiration for both Ms. Bergeson and Chair Sutherland. He wished them both well.

Meeting adjourned at 12:15 p.m.

Approved this 3 day of February, 2009



Peter Goldmark, Commissioner of Public Lands



Bob Nichols for Governor Christine Gregoire



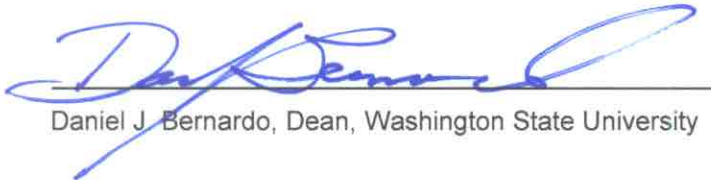
Randy Dorn, Superintendent of Public Instruction



Jon C. Kaino, Commissioner, Pacific County



Bruce Bare, Dean, University of Washington



Daniel J. Bernardo, Dean, Washington State University

Attest:



Bonita Hill, Board Coordinator